OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA

Report to the Speaker of the Legislative Assembly of Alberta

of the Investigation

by Donald M. Hamilton, Ethics Commissioner

into allegations involving Hon. Guy Boutilier, Member of the Legislative Assembly for Fort McMurray-Wood Buffalo

October 20, 2005

ALLEGATIONS

During his annual disclosure meeting with my office, the Hon. Guy Boutilier, Minister of Environment and Member for Fort McMurray-Wood Buffalo, asked whether I would conduct an investigation into allegations made against him by members of the New Democratic Party Opposition. The allegations related to the release of land in Fort McMurray to developers or builders who had made campaign contributions to the Member's election campaigns. I asked Mr. Boutilier to provide a letter to me as required under section 24(3) and the Member did so on June 20, 2005. I replied to the Member on June 22 that an investigation would be conducted.

Specifically, during this investigation, I considered whether Mr. Boutilier had breached either section 2 or section 3 of the *Conflicts of Interest Act*:

Part 2 Obligations of Members

2 (1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

(2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

(3) A Member who fails to comply with subsection (2) breaches this Act.

(4) If a matter referred to in subsection (1) requires a decision of a Minister, the Minister may request another Minister to act in the Minister's stead in connection with the decision and the Minister to whom it is referred may act in the matter for the period of time necessary.

(5) In the case of a meeting of the Legislative Assembly or a committee of it, where a Member has complied with subsection (2), the Clerk of the Legislative Assembly or the secretary of the meeting shall file with the Ethics Commissioner, as soon as practicable, a copy of the deliberations and proceedings, as recorded in Alberta Hansard, of the meeting from which the Member withdrew.

(6) In the case of a meeting of the Executive Council or a committee of it, where a Member has complied with subsection (2), the secretary of the meeting shall record (a) the declaration, (b) the general nature of the private interest declared, and (c) the withdrawal of the Member from the meeting.

(7) The secretary of the meeting shall file the information recorded under subsection (6) with the Ethics Commissioner as soon as practicable after the meeting.

(8) Information filed with the Ethics Commissioner under subsection (7) is confidential and may not be disclosed or inspected, but the information may be inspected and used by the Ethics Commissioner if the information is likely to be material in determining whether a Member has breached this Act.

(9) If no record was kept of who was present at a meeting at the time a matter for decision arose in which a Member, a Member's minor child or a person directly associated with a Member had a private interest, no inference that the Member was present at the meeting at the time the matter arose can be made for the purposes of determining whether there was a breach under subsection (2).

3 A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child.

PERSONS INTERVIEWED/EVIDENCE OBTAINED

During this investigation, I interviewed:

In person:

Hon. Guy Boutilier, Minister of the Environment and Member for Fort McMurray-Wood Buffalo
Ray Martin, Member for Edmonton-Beverly-Clareview
Tim Walsh
Ken Wilson, Deputy Minister, Alberta Seniors and Community Support
Stan Woloshyn, former Minister of Seniors and responsible for the Alberta Social Housing Corporation

Via telephone:

Hon. Yvonne Fritz, Minister of Seniors and Community Supports (in addition to a brief in-person meeting at the commencement of the investigation)
Cliff Maron, President, Wood Buffalo Home Builders' Association
Dave Putz, former City Manager, Regional Municipality of Wood Buffalo
Tim Walsh

Throughout the investigation, Fred Dunn, Auditor General, and his staff made information available to me that they had obtained as a result of their own review of Fort McMurray land transactions involving the Government of Alberta. I wish to express to all of them my gratitude for their cooperation and the documentation they provided.

Information relating to political contributions to Mr. Boutilier and his constituency association was provided to me through Elections Alberta. I wish to thank Brian Fjeldheim, Chief Electoral Officer, and his staff (in particular Glen Resler) for the detailed information they provided to me.

I also received materials obtained by the NDP caucus through Freedom of Information requests and that material was reviewed for any indication that Mr. Boutilier had intervened inappropriately in any decisions relating to the land transactions dealt with in this report.

PRIVATE INTEREST OF HON. GUY BOUTILIER

No specific "private interest" of Mr. Boutilier has been raised during this investigation. In their media releases, the New Democratic Party caucus stated:

> "Confederation Heights has some of the same players as the Timberlea Consortium. What they all have in common is a close relationship with Guy Boutilier, the MLA for Wood Buffalo," says Martin.
>
> "Guy Boutilier has received over $14,000 in campaign donations from people involved in the Timberlea Consortium and Confederation Heights since he's been an MLA," continues Martin.
>
> "Cronyism is alive and well in Conservative ranks. This is the way politics is done in a one-party state," says Martin.
>
> "After 30 years of Tory rule, the Alberta Advantage is for friends, insiders and cronies," concludes Martin.

In previous investigation reports, the former Ethics Commissioner said that "political interests" would not normally constitute a "private interest" as contemplated by the *Conflicts of Interest Act*. In a 1997 investigation report, Mr. Clark wrote:

> ... If political interests, especially the interest in winning an election, is a "private interest," practically everything a Member does could be a breach of the Act because almost every activity undertaken by an elected official contains an element of seeking popular support and the possibility of receiving that support in a re-election bid. Every speech made, every vote cast, every decision taken must, and should, contain a consideration of how that action will be received by the voters. This fundamental and final accountability to the voter is the basis of democracy. If the consideration by a Member of how much support a speech, vote, or decision will gain him or her is a "private interest" (i.e., "Will this help me get re-elected?"), the Act will operate to prevent speeches, votes, and decisions. I do not believe that the Legislature intended the *Conflicts of Interest Act* and the Ethics Commissioner to prevent Members from doing those things which they believe will maximize their public acceptance and hence their chances of being re-elected.

Since this investigation relates to allegations that constituents contributed to a campaign and were "rewarded" for their contributions by a decision of the Government, I felt it was important to investigate this matter to determine if anything inappropriate occurred. That is, did the Member for Fort McMurray-Wood Buffalo take part in a decision or use his position as MLA to influence a Government decision to release lands in Fort McMurray to benefit campaign contributors as a reward for or in appreciation of their support?

As noted above, during the course of this investigation, the Auditor General was conducting an examination of the Alberta Social Housing Corporation's ("the Corporation" or "ASHC") systems for selling land in Fort McMurray. The Auditor General's report will address questions of how and when the lands were released, and whether the Corporation achieved its objectives and received appropriate value for the sale of lands.

It is not within my jurisdiction to review the Corporation's systems. The focus of this investigation is whether Mr. Boutilier breached the *Conflicts of Interest Act* in relation to any of the land transactions in Fort McMurray, and specifically in relation to the Timberlea Consortium or Confederation Heights transactions.

ALLEGATIONS RELATING TO LAND TRANSACTIONS IN FORT McMURRAY/REGIONAL MUNICIPALITY OF WOOD BUFFALO

General Overview

The public will be familiar with the land situation in Fort McMurray as a result of various media stories. The rapid growth in Fort McMurray has been well-documented. As a result of that growth, there has been for some years a shortage of affordable housing in that city. "Affordable" housing is distinct from "social housing" or "low-cost housing." According to a July 4, 2005 *Edmonton Journal* article by Jason Markusoff, the cost of an average single-family home in 2004 was $341,000 and by May 2005, it was $415,800. The rising cost of housing was cited as a concern for attracting and retaining public sector employees such as nurses, teachers and firefighters.

In addition to housing shortages, the rapid growth in Fort McMurray has put strains on existing infrastructure and the city's northern location results in some issues relating to supplies and other resources. Additionally, the geography of the area can pose some challenges.

Land Releases by the Government of Alberta / Alberta Social Housing Corporation (ASHC)

The following information was provided by Ken Wilson, former Deputy Minister, and from information provided by the Office of the Auditor General.

1999:

In May 1999, a public offering was advertised with respect to 10 parcels of land to be released by the ASHC. Suitable bids were received on Parcels 1, 2 and 6/7. The marketing of the remaining parcels was put on hold. The sales on Parcels 1 and 2 proceeded but the deal on Parcels 6/7 collapsed.

2000:

A public offering was held on Parcels 6 and 7 in August 2000 and an offer from Devonian Properties Inc. was accepted.

2002:

In July 2002, Parcel B was put on the market by way of public offering and Devonian Properties Inc. was the successful purchaser. A 19.94-acre site (Parcel B 1) was created at the same time of subdivision as Parcel B and was transferred to the Wood Buffalo Housing and Development Corporation to address the need for affordable housing.

In September 2002, ASHC issued an RFP (request for proposal) to exchange 44 acres of land for affordable housing. A proposal was accepted for an exchange for 12 affordable townhouse units from Tercon Developments Ltd. and Shane Developments Ltd.

2003:

In February 2003, a 2.09 acre parcel was transferred to the Regional Municipality of Wood Buffalo for an Emergency Response Centre. On March 23, Parcel C1, a 17.12-acre parcel, was

transferred to the Wood Buffalo Housing and Development Corporation to help address affordable housing concerns.

2004:

In February, the department met with officials from the Regional Municipality and the Wood Buffalo Home Builders' Association to discuss the housing situation. Negotiations commenced on the release of lands (Parcel E) to a consortium of builders following this meeting. During the same time period, the department was negotiating with the Wood Buffalo Housing and Development Corporation (WBHDC) on Parcel C. In August 2004, an agreement was reached with the WBHDC. On October 18, an agreement was completed with the Timberlea Joint Venture Consortium (1125852 Alberta Ltd.).

A 2.08-acre site was released on January 26, 2004 to 580031 Alberta Ltd., who later sold the property to the Northern Lights Shopping Centre Ltd. In July 2004, a public offering of a 20.94-acre commercial site was held and Loblaw Properties West Inc. was the successful bidder.

On December 29, a seven-acre site was transferred to the Regional Municipality for an RCMP facility.

2005:

A 40.45-acre parcel was created and transferred to the Regional Municipality on March 9 for a high school site.

A public offering was advertised in early 2005 but was withdrawn by the current Minister of Seniors and Community Supports, the Hon. Yvonne Fritz.

An RFP was advertised on August 19 for Parcel D, 371 acres, identified as Timberlea Residential Development Lands. The RFP has a closing date of October 3, 2005.

Land Transactions relevant to this investigation

There are two transactions that have been cited by the New Democratic Party caucus. The two transactions involve some of the same builders and contributors to Mr. Boutilier's campaigns. The first transaction relates to the release of land in 1999 and the second relates to the 2004 release to a consortium.

1. Parcel 2 (Lot 4, Plan 982-4820)

This parcel was marketed in 1999 by the ASHC. The Corporation estimated the parcel as having 158.08 developable acres and the appraised value was $4,745,000. An offer was received from 771042 Alberta Ltd. for $1,897,000. The minutes of the Board of the Corporation indicate the offer was accepted on June 22, subject to the President of the Corporation being satisfied with the company's financial statements.

On November 30, 1999, an Amending Agreement to Offer to Purchase and Agreement of Sale between the Corporation and 771042 Alberta Ltd. was signed, extending the closing date to January 15, 2000. A second Amending Agreement was signed in January 2000, extending the closing date to February 15, 2000. The Agreement for Sale was signed February 15, 2000, with a closing date of February 15, 2005.

As noted, the Corporation believed only 158.08 acres of Parcel 2 could be developed. The entire parcel contained 231 acres. The original offer to purchase proposed that the purchaser would pay an additional amount ($12,000 per acre) if the lands were more than 158.08 acres. The Corporation requested to have that condition of the offer removed. The company (771042 Alberta Ltd.) was able to develop the remaining 73 acres of land.

771042 Alberta Ltd. changed its name to Confederation Heights Inc. Corporate Registry records identify the directors of Confederation Heights Inc. as Sherri Castiglione, Pom Cha, Thad Ostrowski and Tim Walsh. The shareholders of Confederation Heights are listed as:

- 25% owned by 638070 Alberta Ltd. (100% owned by Tim Walsh)
- 25% owned by 723961 Alberta Ltd. (50% owned by Thad Ostrowski and 50% by Elizabeth Ostrowski
- 25% owned by Canko Group Ltd. (directors: Pom Cha and Jane Lee)
- 25% owned by Sherri Co. Ltd. / 811025 Alberta Ltd. (100% owned by Sherri Castiglione)

As noted in Appendix I, each of these individuals or their corporations made campaign contributions to Mr. Boutilier or to his constituency association.

2. Parcel E

Mr. Woloshyn said, based solely on his memory, that he became aware of the affordable housing shortage in Fort McMurray towards the end of 2003. The former Minister, departmental officials, and the MLA (Mr. Boutilier) flew to Fort McMurray in February 2004 to meet with Regional Municipality officials and home builders and developers.

Mr. Woloshyn said he was interested in the consortium proposal put forward at the meeting since it involved local builders who would be familiar with the problems associated with development in Fort McMurray, including potential delays in obtaining supplies. Mr. Woloshyn noted that Tim Walsh was involved with the consortium proposal. The former Minister said he was aware that Mr. Walsh and Mr. Boutilier were friends, but also said that Mr. Walsh was one of the main "players" in Fort McMurray real estate, was a long-time resident, he believed he was head of the Real Estate Board and that he had been involved in an earlier deal with the ASHC.

Mr. Woloshyn stated that the Regional Municipality officials also supported the consortium proposal.

Both Mr. Woloshyn and Mr. Wilson said that the concept of the consortium was discussed on the return flight to Edmonton from Fort McMurray. Mr. Woloshyn said he was supportive of the proposal and gave direction to his department to pursue that proposal. Both men indicated that a major concern in releasing land in Fort McMurray was that it be developed quickly and not held for speculative purposes. Mr. Wilson said that the sales agreement relating to Parcel E took a long time as the department wanted to ensure that development took place and therefore sought a number of caveats in the agreement.

Mr. Wilson said the department had one appraisal done on Parcel E and in hindsight perhaps should have had at least one other appraisal. He noted that the price paid per acre ($35,000) was higher than the appraised value, although land values probably increased between the time of the appraisal and the time the agreement was eventually signed. Mr. Wilson said that revenue generation for the province was not the top priority in the land transactions and that availability of affordable housing was an important concern.

Mr. Wilson also said he was aware that Mr. Walsh and Mr. Boutilier were friends. Mr. Wilson said that relationship had no effect on the decision to award the land to the consortium.

Mr. Wilson said Mr. Boutilier never contacted Mr. Wilson to urge him to do anything for Mr. Walsh. He further said that he and Mr. Woloshyn had discussed the consortium proposal for approximately one month after the February meeting before they talked with Mr. Walsh about proceeding with the proposal.

Mr. Wilson said he believes the consortium was the best option for development of Parcel E. Mr. Woloshyn said that the department did not want speculators involved in a bid process, that time was a factor, and that with respect to the consortium proposal, the department had assurances from developers who had good track records. He said the decision on the consortium proposal allowed the department to put lots on the market in a hurry and at a fair price and that the department did not give anyone a free ride.

The Consortium Proposal

In my telephone interviews with the Fort McMurray citizens and officials and from my interview with Mr. Woloshyn, I was advised that the consortium was not the first or original approach to resolving housing issues in Fort McMurray. Originally, companies active in the oil sands were approached about setting up an infrastructure fund that would be accessed by developers, who would pay back into the fund as they received and developed land. After some discussion, the oil sands companies declined to be involved and suggested the home builders approach the Regional Municipality or the province for funding. Neither the Regional Municipality nor the province would agree to create an infrastructure fund.

Mr. Maron said he broached the idea of the consortium with the former Minister at the meeting in February 2004. By that time, Mr. Putz had had an opportunity to advise Council (at an *in camera* meeting of Council) about the consortium proposal and Council had agreed to support the proposal. As noted above, Mr. Woloshyn discussed the consortium proposal on the flight back to Edmonton from Fort McMurray and for some time with his departmental officials prior to accepting the proposal.

Reasons given to me for the consortium proposal included a desire to expand the number of land developers in Fort McMurray, to ensure that land was put on the market and to spread the cost of development amongst developers.

Mr. Walsh said he took the lead in putting together the consortium and that he first approached Qualico Developments since they were the largest developer in western Canada. He and Qualico officials discussed other potential participants. Mr. Woloshyn said that he was aware of complaints from other builders who were not part of the consortium. Mr. Putz, Mr. Maron and Mr. Walsh all said they were aware that there was some dissatisfaction with the way the consortium was organized as some developers wanted to be involved but were not included.

Mr. Putz said that he met with numerous individuals or groups in the community after the consortium was announced and explained that Council supported the consortium. He said that other groups could have put together a similar proposal for future parcels and that Council would also support that. He said he also talked with Ken Wilson about other possible consortia, and Mr. Putz said Mr. Wilson said the department would support that as well.

Mr. Boutilier's role

Mr. Woloshyn said that none of the decisions relating to land transactions in Fort McMurray went to caucus or to Cabinet. He said no Orders-in-Council were involved. Hon. Mrs. Fritz, the current Minister for Seniors and Community Supports, confirmed that no issues relating to land transactions in Fort McMurray were taken to Cabinet by her since she became the Minister responsible for the Alberta Social Housing Corporation.

Mr. Woloshyn said he had meetings with Fort McMurray representatives himself that did not include Mr. Boutilier. Mr. Woloshyn said that Mr. Boutilier would ask him how things were going in Fort McMurray but did not ask him to award land agreements to Mr. Walsh. Mr. Woloshyn said that he was aware that constituents were raising questions with Mr. Boutilier about land development in the city. Mr. Woloshyn said he does not believe Mr. Boutilier crossed any lines with respect to his enquiries on behalf of constituents and that, as Minister responsible, he would not have allowed that to happen. Hon. Mrs. Fritz also stated that to the best of her knowledge, Mr. Boutilier did not try to influence any decisions relating to Fort McMurray.

Mr. Wilson said he was not asked by Mr. Boutilier to take any actions. Mr. Maron said that Mr. Boutilier's involvement was primarily related to organizing meetings. He said that Mr. Boutilier did attend most of the meetings and was supportive of the home builders' interest in having land made available for development. Mr. Putz said he believed Mr. Boutilier was supportive of the consortium after being advised that Council supported the proposal.

Mr. Walsh said that on the first land transaction (Confederation Heights), he did not talk to Mr. Boutilier at any time. His company bid on three parcels that were part of an RFP process and the ASHC advised him that their bid on one parcel was the only one received and that it was accepted by the ASHC. The other two bids submitted by Mr. Walsh's company were not successful.

FINDINGS

Based on Mr. Woloshyn's comments, Mr. Boutilier was not involved in any decision in caucus or Cabinet. Mr. Wilson said he did not believe Mr. Boutilier had tried to influence any decision made within the department. Staff in the Auditor General's Office advised that no government staff they interviewed provided any evidence that Mr. Boutilier had tried to influence or intervene in any decision regarding the land transactions in Fort McMurray. None of the material provided by the NDP Opposition as a result of their Freedom of Information request revealed any effort by Mr. Boutilier to influence any decision relating to these land transactions.

Section 5 of the *Conflicts of Interest Act* states that a Member does not breach the Act if the activity is one in which an MLA normally engages on behalf of constituents. Setting aside for the moment the issue of campaign contributions, it would be absurd to argue that a Member should not be actively representing a community that is facing unprecedented growth, affordable housing issues and major infrastructure concerns. A Member who failed to represent his or her community on such issues would not be doing the job of MLA.

The question then is: Should the Member be actively representing constituents (individuals or corporations) who contribute to the Member's election campaigns or constituency association? There is nothing in law against such a practice. Indeed, the right to participate in elections – by voting and by contributing to a party of one's choice – is an important element of our form of democratic government. To suggest that MLAs cannot represent constituents who make political contributions would, in my opinion, be open to a constitutional challenge.

I would note that effective representation is separate from actions taken specifically to reward campaign donors for their financial contributions through the awarding of contracts or grants or similar government decisions. There is no evidence in this case that any promises were made to campaign contributors, nor is there any evidence that the Member tried to influence any decision of the Crown in order to reward his campaign contributors.

CONLUSIONS

I would also comment that there were a series of events or decisions that led to the land development transactions that took place in Fort McMurray. The Auditor General, in his report, deals with decisions of the Alberta Social Housing Corporation and whether appropriate policies and procedures were followed. Clearly some decisions could have been handled better and some in a more timely manner. The end result of delays (whether from decision-making by government, developer concerns over the Kyoto Accord or rejected infrastructure funding proposals) was a severe shortage of affordable housing in Fort McMurray. Whether the ASHC made the right decisions with respect to the parcels released for development will no doubt continue to be questioned and criticized, but I found no evidence that the Member for Fort McMurray-Wood Buffalo acted inappropriately in participating in discussions or arranging meetings regarding the affordable housing situation in Fort McMurray.

It is my opinion, based on the findings outlined above, that the Member for Fort McMurray-Wood Buffalo, has not breached any section of the *Conflicts of Interest Act*.

SANCTIONS

As I have not found any breach of the *Conflicts of Interest Act*, I recommend no sanctions.

Donald M. Hamilton
Ethics Commissioner

APPENDIX I

Elections Alberta Contribution Report > $375.00
Progressive Conservative Association of Alberta
RE: Alberta NDP Defined Timberlea Consortium and Confederation Heights

Ref.	Contributor	Type	1998	1999	2001	2004	Total
1	638070 ALBERTA LTD	Candidate, Boutilier Guy			$750.00	$500.00	$1,250.00
2	WALSH REAL ESTATE (1989) LTD	Candidate, Boutilier Guy			$750.00		$750.00
3	776274 ALBERTA LTD	Candidate, Boutilier Guy			$750.00		$750.00
4	CONFEDERATION HEIGHTS INC.	Candidate, Boutilier Guy			$750.00		$750.00
5	SHERRI CO. LTD	Candidate, Boutilier Guy			$1,440.08	$500.00	$1,940.08
6	CANKO GROUP LTD	Candidate, Boutilier Guy			$500.00	$500.00	$1,000.00
7	723961 ALBERTA LTD	Candidate, Boutilier Guy				$500.00	$500.00
8	OSTROWSKI, LIZ	Const. Assn., Fort McMurray	$750.00	$535.70	$516.80		$1,802.50
	OSTROWSKI, TED	Const. Assn., Fort McMurray	$750.00	$750.00	$750.00	$814.80	$3,064.80
		Subtotal	$1,500.00	$1,285.70	$1,266.80	$814.80	
9	QUALICO DEVELOPMENTS WEST LTD	Candidate, Boutilier Guy				$1,000.00	$1,000.00
10	CASMAN BUILDING LTD	Candidate, Boutilier Guy			$1,406.02		$1,406.02
							$14,213.40

Source: Elections Alberta